

INDEX

OF

PRINCIPAL MATTERS.

ABATEMENT.

The pendency of a suit in another state, cannot
be pleaded in abatement. *Stone & al. vs.*
Vincent, 517

ADMINISTRATOR.

1 Does not become personally liable, by announcing to a creditor that the property of the estate has been sold, and his debt shall be paid when the money is collected. *Talmage & al. vs. Patterson,* 604
Even after the proceeds of the sale are collected.
Same case, *id.*

AGENT.

1 May, by a subsequent deed, correct verbal errors in a former one. *Livermore vs. Morgan's syndics,* 134
2 But not, on pretence of doing so, convey property not contemplated in the former deed.
Same case, *id.*
VOL. VI. N. 8 91

INDEX OF

3. When, in a sale made by an agent, the vendee has been in possession for twenty years, the authority of the former will be presumed. *Bourguignon vs. Boudousquie*, 153
4. He must prove facts discharging him from responsibility in the collection of a debt. *Collins & al. vs. Andrews*, 191
5. When a power to sell is given, the expression of the principal's opinion, that the property ought to bring a certain price, will not invalidate a sale for less. *Sprigg's heirs vs. Herman*, 510

APPEAL.

- 1 No relief can be had in the supreme court, on the imposition of a fine of fifty dollars. *Milaudon vs. the Judge of Jefferson*, 24
- 2 When a new trial was refused below, the case is remanded, if the supreme court does not concur in the decision. *McDonogh vs. De Armas & al.* 44
- 3 When a case presents no question of law, the supreme court does not disturb a verdict, unless manifestly erroneous. *Latorre vs. Fortin*, 71
- 4 A party who is neither appellant or appellee cannot have the judgment altered. *Bernardine vs. L'Espinasse*, 94
- 5 The clerk's certificate that the record contains the whole transcript, and a copy of all documents, does not enable the court to examine the case on its merits. *Ditto vs. Barton*, 127

PRINCIPAL MATTERS.

- 6 The judgment is affirmed with damages, when the record is not in a state to enable the court to examine the merits of the case. *Pugh vs. Erwin*, 159
- 7 The appellant cannot dismiss his appeal, when the record is brought by the appellee. *Same case*, *id.*
- 8 When the appellant was not a party below, and his right to appeal is contested, the case is sent back. *Herman vs. Smith*, 161
- 9 No appeal lies from the allowance of exceptions to interrogatories. *Landry vs. Broussart*, 204
- 10 Nor from an order to answer interrogatories. *McDonogh vs. Rogers*, 212
- 11 The judge *a quo* must order the execution of the decree of the supreme court, as he understands it. *Holstein vs. Henderson*, 271
- 12 But if he err, the court will interfere. *Same case*, *id.*
- 13 A mistake in the sum for which the judgment appealed from was rendered, is fatal. *Martin vs. Rutherford & al.* 281
- 14 If the interest on which the right to appeal is claimed, be denied, the case must be remanded. *Oakley vs. Philips*, 306
- 15 The appeal will be dismissed, if granted without fixing the amount of the bond and the return day. *Barker vs. Voorhies*, 316
- 16 So, if the bond be not payable to the appellee. *Scrivener vs. Maxey's heirs*, 317
- 17 The supreme court cannot examine a case in

INDEX OF

- which an appeal has not been prayed for and granted. *Hughes vs. Hooke's heirs*, 328
- 18 The appellee cannot claim interest, in the supreme court, without having prayed that the judgment may be amended in his favour. *Johnson vs. Kirkland & al.* 344
- 19 The defendant waves not his right of appeal by renouncing a new trial, consenting that judgment be signed on the verdict, and that the record should consist of the evidence given at the trial. *Ford vs. Miles*, 377
- 20 If the case be tried out of the regular time, and without evidence, the party cannot be relieved on a *certiorari*, but has a right to his appeal. *Stewart vs. Barrow*, 381
- 21 When there is no statement of facts, &c. the judgment is not disturbed, if any duly admitted evidence would support it. *Mitchel & al. vs. White & al.* 407
- 22 The jurisdiction of the judge *ad quem* depends on the judgment being given by the judge *a quo*, and is not affected by the causes which produced the judgment. *Wooter vs. Turner*, 442
- 23 The supreme court cannot give a judgment which the inferior court could not have given. *Pritchard vs. Hamilton*, 456
- 24 A case will not be remanded, because irrelevant testimony was admitted. *Thompson vs. Chauveau & al.* 458
- 25 An appeal suspends proceedings before the inferior judge. *Williams vs. Chew*, 463

PRINCIPAL MATTERS.

- 26 Whether appeals or writs or error by the U. S.
do not suspend execution in every case ?
Same case, *id.*
- 27 Pending the appeal from the homologation of
the tableau, no creditor may compel payment.
Dreux vs. his creditors, 502
- 28 The supreme court will not, without particular
grounds, disturb a verdict. *Violet vs. La-*
lande, 530
- 29 The third possessor may appeal from a judg-
ment against the mortgagor. *Planters' Bank*
vs. Proctor, 531
- 30 When the only question is the weight of evi-
dence, the verdict prevails in the supreme
court. *Moore vs. Stokes,* 532
- 31 A party, who did not appeal, cannot be heard
above. *Plauche & al. vs. Gravier & al* 597
- 32 A case will be remanded for new evidence,
when justice requires it. *Millaudon vs.*
Smith, 603
- 33 When, from the time and manner of trying a
case, a party has not had the opportunity of
being heard, it will be remanded. *Barrow*
vs. Stewart, 635
- 34 Nothing can be assigned as not apparent on the
face of the record, that depends on the facts
of the case. *Caldwell vs. Townsend & al.* 636
- 35 A case remanded, on error in the finding of the
jury. *Clamageran vs. Sacerdote,* - 647
- 36 No appeal lies from the refusal to transfer a
suit to the federal court. *Higgins & al. vs.*
M'Micken, 712

INDEX OF

ASSIGNMENT.

- 1 A judgment against the assignee of part of a debt forms no *res judicata* against the original creditor. *Ganiot vs. Havard*, 290
- 2 If the assignee neglect to give notice, his right will be destroyed by payment to the assignees. *Styles vs. McNeil's heirs*, 296

ATTACHMENT.

- 1 On a suit on the bond; evidence of the deterioration of the goods cannot be given, without its having been pleaded. *Ponsony vs. Debaillon & al.* 238
- 2 The plaintiff must allege and prove the injury he has sustained from the breach of the condition. *Same case*, id.
- 3 When he claims damages beyond the penalty, the defendant may prove facts inducing a belief that the goods were about to be removed. *Same case*, id.
- 4 The plaintiff may prove the facts which induced the belief that the defendant was about to leave the state. *Same case*, id.
- 5 And whatever shews his intention to remove. *Same case*, id.
- 6 An action of slander cannot be commenced by process of attachment. *Baune vs. Thompson*, 506
- 7 If the surety on an attachment bond be wanted as a witness for the plaintiff, another may be substituted. *Vance vs. Martin & al.* 678

PRINCIPAL MATTERS

ATTORNEY.

- 1 Accepting a debt, in lieu of another, which he is employed to collect, is immediately liable to his client. *Woodrow vs. Hennen*, 150
- 2 His claim for professional services is barred by the lapse of three years, after they are rendered. *Howe's heirs vs. Brent*, 243
- 3 He is responsible for malicious words spoken at the trial. *Stackpole vs. Hennen*, 481
- 4 But not for statements pertinent to the cause, and furnished by his client. *Same case*, *id.*
- 5 If the client be present he will be presumed to have authorised the statement. *Same case*, *id.*
- 6 When he receives notes from a debtor of his client, as collateral security, and promises to sue for them, he acts as agent of the debtor. *O'Conner vs. Bernard*, 572

AUCTION.

- A bidder for, and in the name of, another, cannot take the bid for himself. *Dacquin vs. Coiron & al.* 674

AWARD.

- If the submission be to one, under the hands and seals of the arbitrators, the sealing is of the essence of the award. *Bell vs. James*, 74

BAIL.

- Although the plaintiff be permitted to perfect an irregular service, the bail may avail himself of its irregularity. *McCaleb vs. Maxwell*, 527

INDEX OF

BAILMENT.

A bailment of cotton to gin is for the mutual benefit of the parties, and the bailee is bound only to the care which prudent men take of their own concerns. *Broussard vs. Declouet*, 255

BILL OF EXCHANGE.

If the plaintiff has parted with his interest therein, and gives no other evidence of right, but possession, he will be nonsuited. *Dick & al. vs. Cah & al.* 45

BOND.

- 1 A surety in a sequestration bond is not entitled to the plea of discussion. *Pennyman vs. Barremore*, 494
- 2 A bond may be shewn to have been delivered on another day than that of its date. *Same case*, *id.*
- 3 A bond for *fuorteen hundred and ten* will be taken for *fourteen hundred and ten dollars*. *Same case*, *id.*
- 4 A bond for a writ of error in the federal, is sustainable in the state courts. *Saunders vs. Taylor*, 519
- 5 The penalty cannot be exacted until the obligee be put *in more* according to law. *Llorente vs. Gaitrie*, 623

CODE OF PRACTICE.

Was received in the parish of Rapides on the 3d of October, 1825. *Wilson and wife vs. Baillio & al.* 288

PRINCIPAL MATTERS.

COLLATION.

- 1 A child must collate the value of the labour of
of slaves lent him, thereby to purchase others.
Hamilton vs. Hamilton & al. 143
- 2 But not that of one sent to wait on him. *Same*
case, *id.*

CONGRESS.

- Members of, enjoy no privilege in civil suits,
but exemption from arrest. *Ramsay vs.*
Livingston, 10

CONSTITUTION.

- 1 A law, posterior to a contract, exempting all a
party's property from seizure on execution,
would be unconstitutional. *Sabatier & al.*
vs. their creditors, 585
- 2 So, if it exempted part of it only, and the re-
mainder was insufficient. *Same case,* *id.*

CONTRACT.

- 1 Although it be stipulated that a building is to be
delivered after being approved by experts, if
it be received without, payment cannot be
withheld on the ground that the approval did
not take place. *Fox vs. Azart,* 72
- 2 A party, in whose name a contract is made, is
not bound without his ratification. *Lacroix*
vs. Menard, 96
- 3 The obligations of a contract are those resulting
from it at the time it is entered into. *Sabatier*
& al. vs. their creditors, 585

INDEX OF

CURATOR.

- 1 One may be appointed to a person absent in the public service. *Ramsay vs. Livingston*, 16
- 2 He cannot have credit for higher than legal fees. *Arsenaux vs. Mitchel*, 695
- 3 And must suffer from the neglect of those he employs in collecting debts of the estate. *Same case*, id.

DATE.

- 1 The want of one does not avoid an instrument. *Barfield vs. Hewlett*, 78
- 2 A private act has no effect, as to third parties, until its date be established by something *dehors* the act. *Thomas vs. Callihan's heirs*, 329

DAMAGES.

- 1 If the carrier fails in delivering the goods, the measure of damages is their full value. *Boyle vs. Dickenson & al.*, 100
- 2 Damages cannot be recovered on a contract to deliver slaves until the party has been put in *mora*. *Erwin vs. Fenwick*, 229
- 3 And this must be by writing, suit, protest or demand before two witnesses. *Hagan & al. vs. Clark*, 545
4. In trespass for cutting timber, the measure of damages is its value. *Leblanc & al. vs. Viator & al.*, 253
- 5 Damages, growing out of proceedings originating in the same demand, may be the subject of reconvention, *Boyle vs. Warfield*, 671

PRINCIPAL MATTERS.

DONATION.

- 1 In a, by contract of marriage, to one of the parties, his posterity not proceeding from the marriage, cannot take. *Doucet vs. Broussart & al.* 196
- 2 If land be given, on condition the public buildings of the parish be put on it, it will revert if they are directed to be put elsewhere. *Police jury vs. Reeves,* 221
- 3 But the parish may remove any already erected. *Same case,* id.
- 4 Every act in which the word donation is used, is not necessarily a donation. *Delahoussaye vs. Judice,* 254

EVIDENCE.

- 1 Cannot be received by parol, of a promise to pay conventional interest. *Kenner's syndics vs. Sims,* 66
- 2 He who, without objection, suffers evidence, not on a fact at issue, to go to the jury, is bound by their conclusion. *M'Micken vs. Brown,* 85
- 3 The collateral heir must administer evidence that the heirs in the ascending line, have ceased to exist. *Bernardine vs. l'Espinasse,* 94
- 4 Evidence that a debt was collected, supports an allegation that the party had power to collect it. *Woodrow vs. Hennen,* 156
- 5 A copy from the register's office, in another state, does not dispense with the production of the original. *Coleman & al. vs. Brand,* 207
- 6 The declaration of the party when part of the

INDEX OF

- res gesta*, may be given in evidence. *Ponsony vs. Debaillon & al.* 236
- 7 Parol evidence cannot be received of a practice of Spanish surveyors to exclude swamps from grants of land in the Attakapas. *Leblanc & al. vs. Viator & al.* 253
- 8 The assignment of a judgment, written on the copy of the record, must be proven as a *sous seting prive*. *Griffith vs. Towles*, 261
- 9 The court is to judge of the admissibility of evidence, and cannot relieve itself from responsibility, by leaving it to the jury. *Davis's heirs vs. Prevost's*, 265
- 10 A jailor's certificate is no legal evidence of a prisoner's death. *Gill vs. Phillips & al.* 293
- 11 Fraud not being at issue, parol evidence cannot be given of a promise to sell a slave. *Same case*, *id.*
- 12 An account referred to in a deed of partition is evidence against the heirs. *Same case*, *id.*
- 13 On a plea that the injunction was improperly issued by the judge of another district, evidence cannot be received of the slave having been illegally imported. *Wells vs. Hunter*, 311
- 14 Plats of survey, unless issuing with the title or assented to, make no evidence *per se*. *Milligan's heirs vs. Hargrove*, 337
- 15 A party may use as evidence any document filed in the cause. *Hunter vs. Smith*, 351
- 16 The hand-writing of a clerk, who is dead, in his employer's books, may be proven. *Same case*, *id.*

PRINCIPAL MATTERS.

- 17 A party who has taken no step to bring in a witness, cannot read his testimony in another cause. *Same case,* *id.*
- 18 Every interested person may demand the production of a document in the hands of a third party. *Gardere vs. Fisk,* 387
- 19 And is bound to do so, before he gives evidence of its contents. *Same case,* *id.*
- 20 A party may avail himself of the incorrectness of the sheriff's declaration, and of his neglect to produce the parish judge's certificate, without having pleaded it. *Same case,* *id.*
- 21 An incomplete instrument, which has not the signature of the parties, is inadmissible evidence. *Dick & al. vs. Maxwell,* 397
- 22 Evidence, legal in itself, cannot be rejected, because something more may be necessary to prove the facts. *Hawkins vs. Van Winkle,* 416
- 23 The order of a court of probates, appointing a curator, is evidence of the appointment against all persons. *Thompson vs. Chauveau & al.* 459
- 24 When an instrument is legal evidence of a fact, but not of another, the trial being before the court, it must be read, and the party is afterwards to make his objections. *Same case,* *id.*
- 25 Other words than those laid in the petition, and spoken at another time, may be given in evidence to shew malice. *Kendrick vs. Kemp,* 500
- 26 Evidence may not be given to shew that some time before the inception of the suit, the people of the parish were in the habit of speaking

INDEX OF

of the plaintiff in opprobrious language. *Same case,* *id.*

- 27 In a petitory action, where fraud is not alleged, parol evidence cannot be given that a deed was dated on another day than it purports. *Sprigg's ex'rs. vs. Hennen,* 510
- 28 A confession cannot be divided; but its effect may be weakened or destroyed by other evidence. *Quick vs. Johnson,* 532
- 29 A delay of seven years in the demand, and the plaintiff having since filed his bilan, without notice of the claim, are a presumption of payment. *Tremoulet vs. Cenas' heirs,* 547
- 30 A plaintiff, from whom the delivery of a bill is drawn by an interrogatory, may prove its loss by the answer. *Glasgow vs. Stevenson,* 567
- 31 The copy of a plat certified by a surveyor not in possession of the original, is no legal evidence. *Millaudon vs. Smith,* 603
- 32 Foreign records must be proved according to the acts of Congress. *Johnson vs. Rannels,* 621
- 33 A grant, in the proper form, signed by an officer authorised to grant land under the Spanish government, is legal evidence to go to the jury. *Gayle's heirs vs. Gray,* 693

EXECUTOR.

- 1 Whether he can, by any act, defeat the testator's intention? *Quere. Bernardine vs. L'Es-pinasse;* 532

PRINCIPAL MATTERS.

- 2 A grant of letters testamentary is an order that the will be executed. *Swift vs. Williams & al.* 461

EXPERTS.

- 1 Unanimity is required, in their report on the verity of a signature. *Benfield vs. Hewlet,* 78
- 2 They cannot act on one piece of comparison. *Same case,* 78

HEIR.

- 1 Is the person who is such at the opening of the succession. *Doucet vs. Broussard & al.* 198
- 2 Ascendants, beyond the first degree, are no longer forced heirs. *Johnson vs. Kirkland & al.* 344
- 3 An heir is suable in the ordinary courts. *Sawnders vs. Taylor,* 519

INSOLVENT.

- 1 The syndics cannot admit in compensation a debt of the insolvent, incurred since the failure. *Kenner's syndics vs. Sims,* 69
- 2 Syndics must be sued personally in case of malfeasance. *Pimpinella vs. Lanusse's syndics,* 124
- 3 The judgment of homologation is *res judicata* against all creditors on the bilan. *Louis. In. Co. vs. Campbell.* 131
- 4 An insolvent does not acquire his discharge when the creditors fail to appear. *Dufau vs. Massicot's heirs,* 167

INDEX OF

- 5 Or, having made a charge of fraud, withdraws it. *Same case*, id.
- 6 A promise, by the insolvent's father, to pay the debt of a creditor, who threatens to prosecute for fraud, and promises to procure a discharge from the others, is without a consideration and void. *Perry vs. Frilot*, 218
- 7 Any legal evidence may be offered to support the confession of a debt by the insolvent. *Sabatier & al. vs. their creditors*, 585
- 8 The tableau may be opposed as long as the judgment of homologation is not signed. *Apart vs. his creditors*, 652
- 9 The insolvent's books are evidence against him. *Marmiche vs. Commagere & al.* 657

INSURANCE.

- 1 Under a warranty against seizure for illicit trade, the insurers are not protected against illegal seizure and detention. *Cucullu vs. Orl. Ins. Co.* 11
- 2 If there be a breach of warranty, the insurers are discharged, even when the breach was not the cause of condemnation. *Goicochea vs. Louis. St. Ins. Co.* 51
- 3 Warranties are affirmative and promissory. *Same case*, id.
- 4 And in the nature of conditions precedent. *Same case*, id.
- 5 The written controls the printed part of a policy. *Same case*, id.

PRINCIPAL MATTERS.

- 6 But every part of a policy must be construed together. *Same case,* id
- 7 When there is a written declaration that the goods belong to individuals of a nation at war with that of the port to which the ship is bound, and there is also a warranty against losses arising from illicit trade, the assurers are not liable for a loss of the latter kind. *Same case,* id
- 8 A sentence of a court of admiralty, appealed from, neither proves or falsifies the warranty. *Zino vs. Louis. Ins. Co.* 63
- 9 In the meanwhile, the suit on the policy may be continued for a reasonable time, *Same case,* id
- 10 Demand of payment for a total loss amounts to an abandonment. *Cassedy vs. Louis. St. Ins. Co.* 421
- 11 Whether the demand was in proper time, is a question for the jury. *Mellon vs. Louis. St. Ins. Co.* 424
- 12 An abandonment rightfully made, reverts back to the time of the loss. *Clamageran & al. vs. Banks & al.* 551
- 13 The contract of insurance is to be construed according to the laws of the country where it is made. *Shiff vs. Louis. St. Ins. Co.* 628
- 14 Casual and inevitable losses are not subjects of general average. *Same case,* id

INTEREST.

- 1 Cannot be allowed on a contract made abroad,

INDEX OF

- an proof that it is customary there, without shewing it is legal also. *Glasgow vs. Stephenson*, 561
- 3 Not allowed from the date of the protest. *O'Conner vs. Bernard*, 572
- 3 Not allowed on an open account due in another state, without evidence of its being legal there. *Ory vs. Winter*, 606

JOINT-TENANT.

- Not opposing useful improvements made by the owner managing, and the estate liable therefor. *Percy vs. Millaudon*, 616

JURY.

- 1 Free persons of color are entitled to a. *Bore vs. Bush & al.* 4
- 2 And cannot be tried by a justice of the peace for an offence. *Same case*, *id.*
- 3 The issue *fraus vel non* is peculiarly of the province of the jury. *Abat vs. Segura*, 237
- 4 A jury may be prayed for in an amended answer. *Davis's heirs vs. Prevost*, 565
- 5 But it is in the discretion of the court to allow it to be filed. *Same case*, *id.*
- 6 It ought to be allowed, if the defendants object be not delay, but really to have a jury. *Same case*, *id.*
- 7 A jury is not bound to say a debt is paid, because a witness swears he believes it is. *O'Connel vs. Bernard*, 572

PRINCIPAL MATTERS.

JUSTICE OF THE PEACE.

Acting out of his jurisdiction, derives no protection from his office. *Bore vs. Bush & al.*

See JURY 2.

LAND.

- 1 Location gives no force to a claim in opposition to another stronger by its age and locality. *Latiolais vs. Richard,* 213
- 2 Vacant lands, under the Spanish government, did not generally pass without a grant, altho' they did in certain cases. *Leblanc & al. vs. Viator & al.* 254
- 3 A sale, by Indians, of land assigned them, did not disable them from acquiring a right to the soil in land to which they removed. *Spencer's heirs vs. Grimbull,* 355
- 4 None can take advantage of informality in a sale by them, but themselves, when the price was paid and possession delivered. *Same case,* *id.*
- 5 More than a square league may be recovered on a claim, before the commissioners, grounded on several on the former government. *Some case,* *id.*
- 6 Whether land was the proper subject of a grant, or political circumstances prevented a title from passing, are questions on the effect, not the legality of the grant. *Gayle's heirs vs. Gray,* 693
- 7 On a sale of so many arpents in front, with the usual depth, the side lines will be taken to be

INDEX OF

parallel, unless some expressions in the deed shew the contrary. *Bourguignon vs. Boudousquie*, 694

LOUISIANA CODE.

- 1 Its provisions cannot affect contracts made before its promulgation. *Duncan's Ex'rs. vs. Hampton*, 31
- 2 Same point. *Brown vs. Thompson*, 426
- 3 The omission in it of part of the old, does not repeal it. *Flower & al. vs. Griffith*, 89

MINOR.

- 1 A mother has no right to purchase property for her minor child. *Sarapure vs. Debuy*, 17
- 2 A minor can neither alienate or purchase property, without the authority of justice. *Same case*, *id.*
- 3 But on his coming of age, he may ratify a purchase or alienation made for him during his minority. *Same case*, *id.*
- 4 The law of the domicile of origin govern the state and condition of the minor, in whatever county he removes. *Barrera vs. Alpuente*, 66
- 5 So a native of Louisiana will be of age at 21, although early removed to Havana, where 25 is the age of majority. *Same case*, *id.*
- 6 A contract by which the tutor agrees to pay interest on being allowed time for a debt of the minor, is not void. *Collins & al. vs. Andrews*, 199

PRINCIPAL MATTERS

- 7 And will be supported, if not injurious to the minor. *Same case,* *id.*
- 8 A tutor rendering his accounts, is entitled to a reasonable time to answer objections, *Baillio & al. vs. Wilson & wife,* 334
- 9 The grand-father has a right to the tutorship, after the father and mother, without being recommended by the family meeting. *Comaux vs. Barbin,* 454
- 10 The meeting are to approve of his sureties, and the under tutor must be present at it. *Same case,* *id.*
- 11 The co-heirs of a minor might, under the former laws, be members of the family meeting. *heirs vs. Baron,* 659

MORTGAGE.

- 1 The mortgagee is not bound to proceed against the property last sold, when it was not affected by his lien. *Lanusse vs. Lanna,* 103
- 2 A wife who, before 1817, renounced her mortgage on property sold, did not lose her right in other previously sold. *Same case,* *id.*
- 3 A wife has no mortgage for the fruits of her paraphernal estate. *Same case,* *id.*
- 4 Nor on the estate of her husband's executor. *Same case,* *id.*
- 5 A mortgage cannot be enforced on the improvements made by a third purchaser. *Same case,* *id.*
- 6 The proper mode of ascertaining their value is to have them estimated after the sale. *Same case,* *id.*

INDEX OF

- 7 An act passed in a parish judge's office requires
no further registry to give a mortgage. *Martel & al. vs. Tureaud,* 118
- 8 A third possessor cannot be called on until 30
days after the demand on the mortgagor.
Broussard vs. Philips, 309
- 9 The copy of a copy of an act of mortgage does
not authorise the issue of a writ of seizure.
Poydras vs. Hiriart, 408
- 10 Even when it makes part of the record of a suit
in which the third possessor intervened, if he
did so to be relieved against a sequestration.
Same case, *id.*
- 11 The wife, by renouncing her mortgage on some
property sold by her husband, does not re-
nounce that on other previously sold. *Dreux*
vs. his creditors, 502
- 12 The endorsee of a note secured by mortgage,
cannot have a writ of seizure out of court.
Planters' Bank vs. Proctor, 531
- 13 A creditor by judgment obtained since the re-
peal of the act of 1818, cannot resist the
wife's claim to priority, because her contract
is unrecorded. *Bayon vs. Bayon,* 548
- 14 When the consideration of a note to bearer,
and the right of the holder, are at issue, he
must shew he came by it *bona fide.* *Bowen*
vs. Viel, 566
- 15 A mortgaged square may be sold by lots. *Plau-*
che & al. vs. Granier & al. 597

PRINCIPAL MATTERS.

- 16 A copy of the mortgage, not made by the proper officer, will not suffice in an action against the third possessor under the old code. *Poydras vs. Hiriart*, 650

NEW-ORLEANS.

- A farmer of the corporation may demand a diminution, if the ordinances are not enforced, and he is injured thereby. *Mayor & al. vs. Peyroux*, 155

OPELOUSAS STEAM-BOAT COMPANY.

- 1 Cannot prevent other steam-boats from landing passengers at one of the *termini* of their ferry. *State & al. vs. Wilson*, 178
- 2 Unless they have been taken at the other, or between the two. *Same case*, *id.*

OVERSEER

- Is not a domestic, in the meaning of the code. *McNutt vs. Boyce*, 308

PARISH JUDGE.

- It is not essential he should state in an act he is notary *ex officio*. *Doucet vs. Broussard & al.* 196

PARTNERSHIP.

- 1 May be inferred from circumstances. *Denistoun & al. vs. Debuis & al.* 48
- 2 A partner has no action against his copartner, for money laid out for the partnership, until after a final settlement. *Fox vs. S. B. Fort-Adams & owners*, 82



INDEX OF

3 Even when the claim is settled and acknowledged.

Same case, id.

4 In a suit to ascertain the share of a partner, all must be parties. *Dufau vs. Massicot's heirs,* 182

5 After a partner's death, the affairs of the firm may be carried on for the benefit of his estate and the surviving partner. *Ganiot vs. Haddrd,* 296

6 The vendee of partnership stock cannot sue a partner for charges against him on the books. *Leeds vs. Holmes,* 656

PERJURY.

1 A charge of, in the course of judicial proceedings, does not support an action of slander. *Wanack vs. Kemp,* 477

PRACTICE.

1 A plaintiff has a right to put his case to the jury. *Bore vs. Bush & al.* 1

2 And he cannot be nonsuited by the court, contrary to his will. *Same case,* id.
(See JUSTICE OF THE PEACE, 1—JURY, 1.)

3 When a judgment in a criminal action is the foundation of a civil one, it may be given in evidence therein. *Parish of Orleans vs. Morgan,* 8

4 Every variance in point of time, between the allegation and the proof, is not fatal. *Bus-quoi vs. Hampton,* 6

5 A clause in a contract, that every difference arising under it shall be settled by arbitration,

PRINCIPAL MATTERS.

- cannot be urged at the trial, without having been pleaded. *Same case*, 14
- 6 The provisions of the code of practice, requiring the judge to fix the amount of the sequestration bond, and the sheriff to return it, are directory only. *Vaeter vs. Morgan*, 46
- 7 They authorise no recourse against the sheriff by a plaintiff who is not injured. *Same case*, id.
- 8 A party arrested, on his being about to depart, for a debt not yet payable, may be discharged on proof that he leaves property behind sufficient to pay it, without proving he leaves enough to pay all his debts. *Caraby vs. Davis*, 163
- 9 Final judgment cannot be proceeded to, without an answer or judgment by default. *Miles vs. Oden & al.* 211
- 10 The general issue is a waiver of the plea of payment. *Judice's heirs vs. Brent*, 225
- 11 And *vice versa*. *McMicken vs. Brent*, 249
- 12 To put the defendant *in mora* is a condition precedent to the recovery of damages for the non-delivery of slaves, and advantage may be taken of this, without pleading it. *Erwin vs. Fenwick*, 239
- 13 A judgment for the plaintiff cannot avail him as *res judicata*, against an anterior claim of the defendant, not pleaded in compensation. *Delahoussaye vs. Judice*, 25
- 14 When it is doubtful whether the notice to file interrogatories was given, the deposition

INDEX OF

- ought to be rejected. *Gill vs. Philips & al.* 298
- 15 He who takes out a commission, must see that his adversary's interrogatories be answered. *Baker vs. Voorhies,* 312
- 16 A judgment of nonsuit forms no *res judicata.* *Thomas vs. Callihan's heirs,* 322
- 17 The sickness of the leading counsel is a good ground for a continuance. *Baillio & al. vs. Wilson & wife,* 334
- 18 A court cannot give judgment on a petition addressed to another. *Watson & al. vs. Pierce,* 416
- 19 Nor permit it to be amended. *Same case, id.*
- 20 There can be no nonsuit after a general verdict. *Pritchard vs. Hamilton,* 456
- 21 An officer sued as a trespasser, on a sale on a *fi. fa.* may bring in the plaintiff who gave him a bond of indemnity. *Thompson vs. Chauveau & al.* 458
- 22 A clause authorising any attorney to confess judgment, cannot support a writ of seizure and sale. *Oldham vs. Polk,* 466
- 23 The last residence of a man, who has left the state, is not the house to which the family he lived with, has removed since. *Zacharie vs. Richards,* 467
- 24 A judgment without reasons, is not void, but voidable. *Legendre vs. M'Donogh,* 513
- 25 If the petition contains sufficient facts to support the action, a continuance is improperly

PRINCIPAL MATTERS

- denied to a plaintiff, who swears the absent witnessess will prove all the facts alleged, on account of their irrelevancy. *Winter vs. Donaldsonville,* 534
- 26 District and parish courts are not without jurisdiction. *ratione materiae*, in suits against tutors, executors, curators, &c. *Foucher vs. Caraby & al.* 548
- 27 Reconvention may be by a supplemental petition, if the defendant set up a reconventional demand larger than the original. *Parker vs. Starkweather,* 609
- 28 In an hypothecary action, it is sufficient to allege possession in the defendant. *Walker vs. Dunbar,* 627
- 29 The burden of the proof lies on him who affirms. *Reardon vs. Zacharie,* 644
- 30 The names of subsequent endorsers, need not be set out in an action against the maker. *Abat vs. Tournillon,* 648
- 31 The counsel of the intervening party has no right to open the cause. *Marmiche vs. Commagere & al.* 657
- 32 A creditor who has compelled his debtor to give security before the debt was payable, must afterwards proceed in the ordinary way. *Operton vs. Gervais,* 685
- 33 He who reconvenes is a plaintiff, and a finding in his favour without limitation, is viewed as embracing his whole claim. *Orleans' Nav. Com. vs. Bingeey,* 699

INDEX OF CASES

- 34 A party, interrogated whether he did not agree to erect a mill for the defendants, may answer he agreed to build one in partnership with him, but the defendant neglecting to comply with his part of the contract, they agreed to rescind it. *Nichols vs. Pierce*, 708
- 35 The imputation of a payment is to the most onerous debt. *Abadie vs. Poydras*, 24
- 36 The debt first contracted is considered as more ancient than the one first payable. *Lanusse vs. Lanna*, 108

PREScription

- 1 Is interrupted by the service of the citation, but not by the filing of the petition. *Bonnet & al. vs. Ramsay*, 190
- 2 Cannot be invoked by a possessor, who has not complied with the conditions under which he entered. *Arsine's heirs vs. Harrison and wife*, 326
- 3 A right of pre-emption does not enable to prescribe before the purchase. *Milligan's heirs vs. Hargrove*, 337
- 4 Rent is prescribed by five years. *Mayor & al. vs. Hennen*, 426
- 5 A sheriff who has received money on an execution, cannot invoke the prescription of five years. *Tremoulet vs. Cenis' heirs*, 541
- 6 An action against a sheriff for taking an insufficient bond, is prescribed by one year. *Simple & al. vs. Buhler*, 665

PRINCIPAL MATTERS.

- 7 So, that for an illegal return. *Fisk vs. Browder & al.* 691
- 8 In the latter case, the prescription runs from the return. *Balfour vs. Browder,* 708

PRIVILEGE.

- 1 Workmen and material men, when employed by the undertaker, have no privilege of their own. *Nolte & al. vs. their creditors,* 168
- 2 But may avail themselves of those of the undertaker. *Same case,* id.
- 3 And their claims are not postponed to the payment of advances not stipulated. *Same case,* id.
- 4 Neither of them acquires a preference over others by seizure. *Same case,* id.
- 5 A builder, whose contract is not recorded, is entitled to no privilege. *Odie vs. his creditors,* 473
- 6 Even if he obtains judgment, if it be not recorded before the cession. *Same case,* id.
- 7 The privilege resulting from the contract of deposit, is unaffected by the new code. *Sabatier & al. vs. their creditors,* 586
- 8 A privilege on the property seized, will not warrant an injunction to stop the sale. *Herbert's heirs vs. Babin & al.* 615
- 9 The receipt of a draft in payment destroys the vendor's privilege. *Abat vs. Nolte & al.'s syndics,* 636

PROMISSORY NOTE.

- 1 If a transfer be written on the back of one, but

INDEX OF

- not signed, it will be considered as inchoate only, if the note remains in the possession of the transferee. *Ramsay vs. Livingston*, 15
- 2 When the endorser is party to an instrument, for which the note was given, he cannot claim the benefit of the *lex mercatoria*. *Martel & al. vs. Tureaud*, 118
- 3 When the note is annexed to and made part of the petition, there cannot be a variance between the *allegata* and *probata*. *Ditto vs. Bartow*, 127
- 4 The endorsee may bring in his endorser, when the signature of a prior endorser is denied. *Lafonta vs. Poultz*, 391
- 5 The certificate of the notary who protested the note, is admissible evidence, although it does not establish every fact necessary to support the plaintiff's claim. *Dick & al. vs. Chew & al.* 394
- 6 The certificate should state the office in which the notice was put. *Pritchard vs. Hamilton*, 456
- 7 Notice at the post-office is insufficient, when the endorser lives within three miles of it. *Louis. St. Bk. vs. Bonel*, 506
- 8 When one gives two endorsers, the first is liable to the second. *Stone & al. vs. Vincent*, 517

See MORTGAGE, 14.

SALE.

- 1 Judgment cannot be given against the vendor.

PRINCIPAL MATTERS.

- when the evidence does not shew the value of the land, independent of improvements, was the price paid. *Macarty vs. Panchon*, 116
- 2 The sale of a deceased person's property is made with reference to the inventory and appraisement. *Hamilton vs. Hamilton & al.* 144
 - 3 The court of probates has power to decide on sales of the real estate of a succession. *Gill vs. Philips & al.* 298
 - 4 The acknowledgment of the payment of the price in a private act of sale, cannot be contested. *Baker vs. Voorhies*, 312
 - 5 If the vendee be not subrogated to his vendor's right of warranty, he cannot resort thereto. *Davidson vs. Chabre's heirs*, 317
 - 6 Property fraudulently sold, by the defendant, cannot be taken in execution until the sale be set aside. *Yocum vs. Bullit & al.* 324
 - 7 And the sale cannot be set aside, in a suit to which the vendee is not a party. *Same case, id.*
 - 8 On a sale of land, by the sheriff, for taxes, the vendee must shew an assessment. *Nancarrow vs. Wheatherby*, 347
 - 9 A sale by a court of probates does not extinguish the mortgage given by the vendor of the deceased. *Johnson vs. Bell & al.* 384
 - 10 The vendee who does not give to his vendor notice of the claim of a third person, does not thereby lose his recourse. *Same case, id.*
 - 11 The purchaser of three lots, disturbed in one of them, cannot suspend the payment of the other two. *Pierce vs. Morgan*, 526

INDEX OF

- 12 A delivery is unnecessary, when the thing is in the possession of the vendee, although in *autre droit*. *Peet & al. vs. Morgan*, 586
- 13 A sale, by a father to his minor son, the former remaining in possession, will be presumed simulated. *Beale vs. Delancy & al.* 640

SHERIFF.

- 1 A legislative provision that, if the security be not good, and the sheriff proceeds to sell, he shall be liable in damages, does not repeal other parts of the law, under which he was liable before. *Peet & al. vs. Morgan*, 589
- 2 Whether two sheriffs may be sued together for illegal returns on different writs, in the same suit. *Fisk vs. Browder & al.* 691
- 3 A purchaser at a sheriff's sale may avail himself of the incorrectness of the sheriff's declarations, and his neglect to produce the parish judge's certificate, without having pleaded it. *Gardere vs. Fisk*, 387
- 4 The sheriff is bound to seize property pointed out by the defendant. *Miller vs. Morgan*, 87

SHIP.

- 1 A removal of the goods from the quay does not prevent a recovery for injury, really proven to have been received on board. *Oakey & al. vs. Russel & al.* 58
- 2 Portwardens are judges of the necessity of selling damaged goods. *Same case*, *id.*

PRINCIPAL MATTERS.

- 3 A lender on bottomry or *respondentia* is liable to contribution in general average. *Chandler & al. vs. Gravier,* 599

SLAVE.

- 1 Whether the vendor of a, in this state, warrant the title, according to the law of the state to which he is removed. *Volant vs. Lambert,* 555
- 2 The warranty is not limited to title with possession. *Same case,* *id.*
- 3 But extends to cases where possession is lost, and the vendee is driven to a suit. *Same case,* *id.*
- 4 The article of the constitution of the United States, relating to forfeitures, does not extend to a case in which property is claimed in a slave, according to the laws of a state to which he is removed. *Same case,* *id.*

SOUS SEING PRIVE'.

- 1 An act, accompanied by possession, has effect against third persons. *Roulin vs. Sabatier & al.'s syndics,* 429
- 2 When the act is not made double, it is a commencement of proof in writing. *Pignatel vs. Drouet,* 432
- 3 A commencement of proof in writing, is presented by every instrument, which requires proof by parol evidence. *Same case,* *id.*
- 4 In a written agreement for the sale of land, parol proof of its genuineness may be given, tho' it was not made double. *Same case,* *id.*

INDEX OF

- § A sale of land, by private act, is valid, though the parties promise to have an authentic act executed, and this be not done. *Same case, id.*

STIPULATION.

- 1 A third party may enforce a, in his favour.
Flower vs. Lane & al. 151
- 2 Such a stipulation, in consideration of his services, may be altered by the parties, provided he, be not thereby injured, in regard to these services. *Thompson vs. Linton & al.* 676

SURETY.

On a twelve-months' bond, cannot be discharged on the ground of the unconstitutionality of the law under which it was taken. *Bradford vs. Skillman,* 123

SURVEYOR.

His operations cannot derogate from claims recognised by the officers of the U. S. *Latiolais vs. Richard,* 214

TRUSTEE.

Authorised, under the common law, to receive interest on a bond, and pay it over, may, on the failure of the obligor, lend the money to others. *Morgan & al. vs. their creditors,* 409

WIDOW.

The exception in favour of a, become so during her minority, with regard to estates inherited from her children, is unrepealed.
Duncan's ex'r. vs. Hampton. 31

PRINCIPAL MATTERS.

WILL.

- 1 A trifling variance between the words spoken by the testator, and those written by the notary, is not fatal. *Hamilton vs. Hamilton & al.* 143
- 2 The clause declaratory of the testator's sanity, is a mere formula. *Same case,* *id.*
- 3 The notary may ask him in what manner he wishes to dispose of his property. *Same case,* *id.*
- 4 It is a fatal objection to a will, offered as an authentic one, that it contains no clause declaring it was written by the notary. *Masse's heirs vs. Pierre & al.* 263
- 5 On the allowance of the objection, the faculty of presenting it as a will under private signature will not be reserved to the party. *Same case,* *id.*
- 6 When the right of a legatee is disputed, he may bring suit to establish it. *Wooter vs. Turner,* 443
- 7 Although he cannot have judgment for a specific sum, until the estate be settled. *Same case,* *id.*
- 8 And the facts may be tried by a jury. *Same case,* *id.*
- 9 A will need not be proven in this state, when used merely as evidence of title. *Johnson vs. Rannels,* 621

WITNESS.

- 1 Although a party, against whom a witness is examined on interrogatories, be not entitled to cross-examine, the adverse party may consent to his doing so. *Gill vs. Jett,* 279

INDEX.

- 2 And if he do, and give notice of time and place,
he may not examine elsewhere, or on another
day. *Same case,* *id.*
- 3 An attorney is a good witness, when not called
on to disclose what came to his knowledge
when consulted in his professional capacity.
Reeves & al. Benton & al. 283
- 4 In testing the competency of a witness, the main
question is, whether the judgment may be
given in evidence against him. *Same case,* *id.*
- 5 He who testifies against his interest, is a good
witness. *L'Evesque vs. Anderson,* 294
- 6 A witness is not to be rejected, because he is a
creditor of the defendant's ancestor. *Thomp-
son vs. Chauveau & al.* 455
- 7 Nor because, being a mortgagee of the land
bought by the plaintiff, he received his debt
from him and gave a release. *Same case,* *id.*
- 8 The defendant on a *f. fa.* whose land was sold,
not a good witness in a suit for a rescision.
Same case, *id.*
- 9 When the witness, who states a fact that renders
him incompetent, states others which restore
him to competency, he is to be heard. *McMic-
ken vs. Fair.* 515

